

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 25, 2013

**Elisabeth A. Shumaker
Clerk of Court**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL JACKSON WINROW, JR.,

Defendant - Appellant.

No. 13-6217
(D.C. No. 5:12-CR-00128-D-1)

ORDER

Before **BRISCOE**, Chief Judge, **HARTZ**, and **O'BRIEN**, Circuit Judges.

This matter is before us on the government's "Motion to Dismiss." The government seeks to dismiss this appeal on timeliness grounds.

This matter was opened as a direct appeal from a judgment of conviction in a criminal case following the district court's docketing of a misdirected notice of appeal. *See* Fed. R. App. P. 4(d). The district court entered the judgment of conviction against Appellant Michael Jackson Winrow on January 17, 2013. Pursuant to Fed. R. App. P. 4(d), the district court filed Mr. Winrow's notice of appeal as of July 15, 2013. In a criminal case, the notice of appeal must be filed in the district court within 14 days after entry of the judgment. Fed. R. App. P. 4(b)(1). Mr. Winrow's notice of appeal, filed 165 days after entry of the judgment of conviction is, therefore, untimely.

The timely filing of a notice of appeal by the defendant in a criminal case is an inflexible claim-processing rule that may be forfeited if not properly raised by the government. *United States v. Garduño*, 506 F.3d 1287, 1290-91 (10th Cir. 2007). If properly raised, however, we must grant relief. *United States v. Mitchell*, 518 F.3d 740, 744 (10th Cir 2008) (citing *Garduño*, 506 F.3d at 1290-91). Because the government has properly invoked the time bar in Rule 4(b), and we agree that the notice of appeal was untimely as to the judgment of conviction, the government's motion to dismiss is granted and the appeal is dismissed. Mr. Winrow's "Motion to Dismiss Without Prejudice" is denied as moot.

A copy of this order shall stand as and for the mandate of the court.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script, appearing to read "Jane K. Castro", with a long horizontal flourish extending to the right.

by: Jane K. Castro
Counsel to the Clerk